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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Barry E. Robertson
Calhoun County License Commissioner
County Administration Building
1702 Noble Street, Suite 107
Anniston, Alabama 36201

License Commissioners – Fees – Sales Tax
– Conflicts of Law

The collection of fees under section 11-51-203(b) of the Code of Alabama applies only to the collection of fees on vehicles sold by dealers not licensed in Alabama or by licensed dealers who failed to collect sales taxes at the point of sale and should be collected in the amount specified in section 40-23-107.

The collection of fees, generally, under section 11-51-200, *et seq.*, of the Code should be in the graduated amount specified in section 11-51-203(c).

Dear Commissioner Robertson:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Do the provisions of section 11-51-203(b) only apply to collection of taxes on vehicles sold by dealers that are not licensed in Alabama?

(2) Should fees be paid in accordance with the provisions of section 40-23-107 of the Code?

(3) Should the entire 5 percent of fees be collected, or should the fees be collected in the graduated amount specified in section 11-51-203(c)?

FACTS AND ANALYSIS

Your questions relate to the fees you are authorized to receive for collecting certain taxes under the provisions of section 11-51-200, *et seq.*, of the Code. Section 11-51-203 states the following:

(a) All taxes levied or assessed by any municipality pursuant to the provisions of Section 11-51-202 shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulations promulgated under the Alabama Administrative Procedure Act, direct pay permit and drive-out certificate procedures, statutes of limitation, penalties, fines, punishments, and deductions for the corresponding state tax as are provided by Section 40-2A-7 and Article 2 of Chapter 23 of Title 40, except where inapplicable or where otherwise provided in this article.

(b) Notwithstanding the provisions of subsection (a), the tax provided in Section 11-51-202 on any automotive vehicle, truck trailer, trailer, semitrailer, or travel trailer required to be licensed with the probate judge, which were sold by dealers that are not licensed in Alabama, or were sold by licensed Alabama dealers who failed to collect municipal or county sales taxes at the point of sale, shall be collected and fees paid in accordance with the provisions of Sections 40-23-104 and 40-23-107, respectively.

(c) For making the collection of county or municipal taxes levied under the authority of this article, the tax collector shall be entitled to a fee from the recipient county or municipality in an amount equal to five percent of the first ten thousand dollars (\$10,000) of revenue collected for the recipient and three percent of all revenue collected over ten thousand dollars (\$10,000) for the recipient under this article

each month. Such fee shall be for the use of the tax collector, except as otherwise provided by law. The fees allowed herein shall be deducted from the tax collection of each recipient each month and the remainder of the collections shall be remitted to each recipient as provided by law; provided, however, the fee shall be disallowed with respect to any tax collected for the county or municipality unless the collections are remitted to the appropriate county or municipal tax recipient within the time allowed by law. In all counties where the tax collector is paid on a salary instead of a fee basis, all fees allowed under the terms of this section to be paid to the tax collector shall be paid, by the tax collector, into the county treasury or to the official performing the duties of county treasurer.

ALA. CODE § 11-51-203 (2008).

Section 40-23-107 reads as follows:

For making the collection of taxes levied under authority of this article, the licensing official shall be entitled to a fee in an amount equal to five percent of all revenue collected under this article each month. The fee shall be for the use of the licensing official. The fee shall be deducted from the tax collections each month and the remainder of the collections shall be remitted to the Department of Revenue. Notwithstanding the foregoing, the fee shall be disallowed unless the collections are remitted to the Department of Revenue within the time allowed by law. In all counties where the licensing official is paid on a salary instead of a fee basis, all fees allowed under the terms of this section to be paid to the licensing official shall be paid, by the licensing official, into the county treasury, or to the official performing the duties of county treasurer.

ALA. CODE § 40-23-107 (2011).

It is a well-established rule of statutory construction that statutes, and their provisions, should be read *in pari materia*, meaning they should be read

together to give effect to each one. *See Alabama Dep't of Revenue v. Nat'l Peanut Festival Ass'n, Inc.*, 11 So. 3d 821, 829-30 (Ala. Civ. App. 2008); *see also Ex parte Jones Mfg. Co., Inc.*, 589 So. 2d 208 (Ala. 1991); *see also, Bouldin v. City of Homewood*, 277 Ala. 665, 174 So. 2d 306 (1965). In the event two statutes conflict, the general rule requires that the specific statute relating to a specific subject prevails over the general statute relating to a broad subject. *Id.*; *see also, Crawford v. Springle*, 631 So. 2d 880 (Ala. 1993); *Downing v. City of Russellville*, 241 Ala. 494, 3 So. 2d 34 (1941).

Similarly, the court has held that “[s]pecial provisions relating to specific subjects control general provisions relating to general subjects, and the general law yields to the special provisions. . . . Where provisions are particularized[,] such special provisions must be understood as exceptions to any general law.” *See Bouldin*, 277 Ala. 665, 672, 174 So. 2d 306, 312-13 (citations omitted); *see also, Murphy v. City of Mobile*, 504 So. 2d 243 (Ala. 1987); *see also, Miller v. State*, 29 So. 2d 411, 416-17 (Ala. 1947) (stating that “when the law descends to particulars . . . the general rules must not . . . be alleged in confutation of the special provisions”); *Herring v. Griffin*, 100 So. 202 (Ala. 1924).

Regarding the issue at hand, section 11-51-203(b) is a specific provision relating to the collection of taxes on vehicles sold by dealers not licensed in Alabama or by licensed dealers who failed to collect sales taxes at the point of sale. It states that the collection of same should be made pursuant to sections 40-23-104 and 40-23-107. As a specific provision, it prevails over the general provision of section 11-51-203(c), stating that the fees should be collected in a graduated amount.

Breaking down the language of section 11-51-203 supports the above conclusion. Subsection (a) refers to section 11-51-202. This statute generally addresses the excise, use, and lodgings tax to be collected under section 11-51-200, *et seq.* Section 11-51-203(c) discusses the collection of fees in a graduated amount and begins with the following language: “For making the collection of county or municipal taxes levied under the authority of this article. . .” ALA. CODE § 11-50-203(c) (2008). This language is broad, not specific. Therefore, it appears to apply to all taxes levied under section 11-51-200, *et seq.*, the exception being a specific provision stating otherwise, such as section 11-51-203(b).

Section 11-51-203(b) begins with the following language: “Notwithstanding the provisions of subsection (a). . .” ALA. CODE § 11-50-203(b) (2008). “Notwithstanding” is generally interpreted as “[d]espite, in spite of.” *See BLACK’S LAW DICTIONARY* 1231 (10th ed., 2014). Therefore, this language indicates that the collection of taxes under subsection (b) should be

collected from those dealers not licensed in Alabama, etc., regardless of the manner in which they are generally collected under subsection (c).

CONCLUSION

Based on the above, it is the opinion of this Office that the specific language of section 11-51-203(b) of the Code will apply only to the collection of fees on vehicles sold by dealers not licensed in Alabama or by licensed dealers who failed to collect sales taxes at the point of sale. The fee should be collected pursuant to section 40-23-107 at the 5 percent rate as set out by this section. Section 11-51-203(c) broadly applies to the collection of fees for use, excise, and lodgings tax as generally addressed in section 11-51-200, *et seq.*, of the Code, unless there is another provision specifically stating otherwise. These fees should be collected at the graduated amount discussed in subsection (c) of section 11-51-203.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Hilary Y. Park, Legal Division, Department of Revenue.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in cursive script, reading "Brenda F. Smith".

BRENDA F. SMITH

Chief, Opinions Division

LS/HYP

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